Waste Management of Maryland, Inc. *and* William E. Jupiter and Drivers, Chauffeurs and Helpers, Local 639, a/w International Brotherhood of Teamsters, AFL–CIO. Case 5–RD–1309

April 25, 2003

DECISION ON REVIEW AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On October 21, 2002, the Regional Director for Region 5 issued a Decision and Order in the above-entitled matter in which he dismissed the decertification petition filed by William E. Jupiter, finding that it was barred by a contract between the Employer and Intervenor Local 639 (Union). Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision and Order. On February 12, 2003, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On careful consideration of the entire record, including the Employer's brief on review, we find, contrary to the Regional Director, that as of the filing of the decertification petition, the Employer and the Union did not have a signed collective-bargaining agreement sufficient to bar the processing of the petition. We therefore remand this case to the Regional Director to process the decertification petition.

Facts

On September 18, 2001, the Union was certified to represent the Employer's drivers, helpers, and mechanics at its White Plains, Maryland site and thereafter the parties began bargaining for a first contract. On July 15, 2002,[1] the negotiations culminated in the Employer sending the Union an unsigned "Final Agreement Tentatively Reached Between the Parties as a Result of Negotiation Ending July 11, 2002." The July 15 offer represented a 4-year contract from the "date of execution." Attached to the offer was a signed cover letter.[2]

On July 18, the employees rejected the July 15 offer. The parties held further bargaining sessions in August and September. At some point in early September, the Employer orally acquiesced in the Union's proposal that the proposed contract be extended from 4 to 5 years. However, no written changes were ever made to the Employer's original July 15 offer, and the parties never addressed the economic terms for the 5th year.

On September 13, the Union and the Employer had a telephone conversation in which they discussed outstanding contract proposals. The Union claims that the Employer characterized these proposals as its "final offer." On September 16, the Union took what it believed was the Employer's final offer to the employees for another ratification vote. The employees once again rejected the proposal. On September 18, on the eve of the expiration of the certification year, the Union faxed a letter to the Employer stating: "The Executive Board of Teamsters, Local #639 has determined to accept the final offer *submitted by Waste Management of White Plains, MD, on Friday, September 13, 2002.*" (Emphasis added.) The next day, employee William Jupiter filed the instant decertification petition.

The Regional Director found that the parties had entered into a collective-bargaining agreement on September 18, which barred the decertification petition filed on September 19. To reach this conclusion, he relied on (1) the Employer's July 15 written contract proposal, (2) the Employer's signature from the July 15 cover letter, and (3) the Union's September 18 acceptance letter. The Regional Director concluded that these three documents, taken together, satisfied the Board's longstanding requirements under *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). We disagree.

Analysis

The sole issue before the Board is whether the parties' exchange of letters is sufficient for contract bar purposes.[3] Because a finding of contract bar necessarily results in the restriction of the employees' right to freely choose a bargaining representative, an agreement must meet certain formal and substantive requirements in order to bar an election. *Appalachian Shale*, supra at 1161; *Seton Medical Center*, 317 NLRB 87 (1995). The Board has long required, for contract-bar purposes, that the contract: (1) be signed by both parties prior to the filing of the petition that it would bar; and (2) contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. See id. However, the document signed need not be a formal collective-bargaining agreement, nor must the signatures appear on the same document. Recognizing that parties do not always ceremonially sit down to sign a formal, final, document upon the successful conclusion of negotiations, the Board has held that informal documents laying

[1] Unless otherwise specified, all dates are in 2002.

[2] The cover letter was over the name of the Employer's chief negotiator and signed for him by his assistant. The letter stated: "Enclosed is a draft of our final agreement. I understand a ratification vote is scheduled for this week. Please contact me with the results as soon as possible. Upon notice of ratification, we will immediately implement its terms the next pay period."

[3] Whether the parties' exchange of letters was sufficient to form an enforceable contract for other purposes is not before us.

out substantial terms and conditions of employment can serve as a bar, so long as those informal documents are signed. See *De Paul Adult Care Communities, Inc.*, 325 NLRB 681 (1998); *Seton Medical Center*, supra at 87; *Television Station WVTV*, 250 NLRB 198, 199 (1980); *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977). However, this flexibility does not excuse the parties from the fundamental requirement that they signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract's specific terms or referencing other documents which do so. See *Seton Medical*, supra at 87–88.

Moreover, in representation cases, the Board has consistently limited its inquiry to the four corners of the document or documents alleged to bar an election and has excluded the consideration of extrinsic evidence. See *United Health Care Services*, 326 NLRB 1379 (1998) (limiting inquiry into whether contract required ratification for contract-bar purposes to the face of the documents and excluding parol evidence); *Jet-Pak Corp.*, 231 NLRB 552 (1977) ("The Board has consistently held that the 'legality of a contract asserted as a bar is to be determined in representation proceedings from the face of the contract itself and that extrinsic evidence will not be admitted . . . .'"); *Union Fish Co.*, 156 NLRB 187, 191–192 (1965) ("[T]he Board requires that the term, as well as the adequacy of a contract, must be sufficient on its face, with no resort to parol evidence necessary, before the contract can serve as a bar.")

Branch Cheese, 307 NLRB 239 (1992), provides a clear example of the Board's requirement that, for contract bar purposes, the documentary evidence, on its face, must be sufficient to establish the terms of the agreement and must leave no doubt that it represents an offer and acceptance of those terms. In that case, the Board found no contract bar where it was uncertain from the exchange of documents what offer the union was accepting, despite the fact that the parties had implemented the terms of the alleged contract for almost a year before the petition was filed. The employer presented a full contract offer on October 12, 1990, and then made several amendments later on December 12, 1990. The union sent a letter accepting the contract stating that the "Labor Agreement was ratified 33 yes and 10 no." The Board noted that the union's letter failed to specify which agreement the union was accepting—the original offer or the amended offer. Accordingly, because the union's letter failed to spell out or refer to specific language that purportedly constituted the contract, the Board concluded that the evidence was "not sufficient to establish the identity or the terms of the purported agreement." Id. at 240.

Here, similar confusion exists. The parties' exchange of written materials leaves much doubt as to the terms of the alleged contract. The Union's September 18 acceptance letter referred only to the Employer's "final offer" of "September 13, 2002." The Union, however, failed to produce a single document, other than its own acceptance letter, which refers to or embodies a September 13 offer.

Between the July 15 offer and the Union's September 18 "acceptance," the parties continued negotiations. The record makes clear that the parties reached an oral agreement to change the term of the July 15 proposal from 4 to 5 years. However, because the Union's September 18 letter contains only a reference to a September 13 offer, with no supporting documentation, we cannot ascertain the exact terms the Union accepted on September 18. Given this ambiguity, the parties' exchange of letters cannot serve as a bar to the decertification election. *Branch Cheese*, supra at 240.

Accordingly, we reverse the Regional Director's conclusion that the petition is barred by an existing collective-bargaining agreement, reinstate the petition, and remand this case to the Regional Director for further processing in accordance with this decision.[4]

[4] The Employer also contended that there was no contract bar because the contract lacked a specific execution date; it was preconditioned on ratification by the employees and the Union failed to obtain such ratification; the Union's acceptance amounted to nothing more than a counteroffer; and the contract did not impart sufficient stability to the parties' bargaining relationship. We find it unnecessary to pass on these contentions.